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5 Attorneys for Creditor  
6 HSBC Bank USA, National Association, as  
Indenture Trustee for People's Choice Home Loan  
7 Securities Trust Series 2005-3

8 **UNITED STATES BANKRUPTCY COURT**  
9 **NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE DIVISION**

10 In re  
11 Michael Haroutun Miroyan,  
12 Debtor.

Case No. 18-52601

Chapter 13

**OBJECTION TO CONFIRMATION OF  
DEBTOR'S CHAPTER 13 PLAN OF  
REORGANIZATION**

**SUBJECT PROPERTY:**

62-2280 Kanehoa St. #1  
Kamuela, Hawaii 96743

**CONFIRMATION HEARING:**

DATE: January 25, 2019  
TIME: 9:55 AM  
PLACE: San Jose Courtroom 3020 -  
Hammond  
CTRM: 3020  
JUDGE: M. Elaine Hammond

13 HSBC Bank USA, National Association, as Indenture Trustee for People's Choice Home  
14 Loan Securities Trust Series 2005-3, by and through its authorized loan servicing agent, Ocwen  
15 Loan Servicing, LLC (collectively the "Creditor"), secured creditor of the above-entitled debtor,  
16 Michael Haroutun Miroyan ("Debtor"), hereby objects to confirmation of the Chapter 13 Plan filed  
17 by the Debtor in the above-referenced matter. The basis of the objection is stated below: <sup>1</sup>

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26 <sup>1</sup> This objection shall not constitute a waiver of the within party's right to receive service pursuant to Fed. R. Civ. P.  
27 4, made applicable to this proceeding by Fed. R. Bankr. P. 7004, notwithstanding Robertson, Anschutz, & Schneid's  
28 participation in this proceeding. Moreover, the within party does not authorize Robertson, Anschutz, & Schneid, either  
expressly or impliedly through Robertson, Anschutz, & Schneid's participation in this proceeding, to act as its agent  
for purposes of service under Fed. R. Bankr. P. 7004.

1 I. STATEMENT OF FACTS<sup>2</sup>

2 On or about April 25, 2005, Debtor executed a promissory note in the original principal  
3 sum of \$747,000.00 (the “Note”) which was made payable to People’s Choice Home Loan, Inc.,  
4 a Wyoming Corporation (“Lender”). The Note was and remains secured by a recorded deed of  
5 trust (the “Deed of Trust”) encumbering the real property located at 62-2280 Kanehoa St. #1,  
6 Kamuela, Hawaii 96743 (the “Subject Property”). Subsequently, Lender’s beneficial interest  
7 under the Deed of Trust was transferred to Creditor.

8 On November 26, 2018, Debtor filed the instant Chapter 13 bankruptcy petition in the  
9 United States Bankruptcy Court for the Northern District of California – San Jose Division, and  
10 was assigned case number 18-52601.

11 On December 10, 2018, Debtor filed his Chapter 13 Plan (“Plan”) which provides for  
12 Creditor’s claim in Class 7. The Plan proposes to cure Secured Creditors claim through sale of the  
13 real property. However, the plan fails to mention the duration of the pending property sale. Secured  
14 creditor objects to any plan that proposes to sale the real property and fails to acknowledge the  
15 duration of the pendency of the sale.

16 II. ARGUMENT

17 A. **DEBTOR’S CHAPTER 13 PLAN CANNOT BE CONFIRMED BECAUSE IT DOES**  
18 **NOT PROMPTLY CURE CREDITOR’S PRE-PETITION ARREARS AS**  
**REQUIRED BY 11 U.S.C. §1322(b)(5)**

19 Section 1325(a)(1) requires that “the plan complies with the provisions of this chapter and  
20 with the other applicable provisions of this title.” 11 U.S.C. § 1325(a)(1). Section 1322(b)(5)  
21 requires that all chapter 13 plans must provide for the “curing of any default within a reasonable  
22 time and maintenance of payments while the case is pending on any unsecured claim or secured  
23 claim on which the last payment is due after the date on which the final payment under the plan is  
24 due.” Further, section 1322(b)(2) prohibits debtors from modifying the rights of secured creditor  
25 whose security interest is secured solely by the debtor’s principal residence.

26  
27 <sup>2</sup> Pursuant to Rules 201(b) and 201(d) of the Federal Rules of Evidence, which are made applicable to this proceeding  
28 by Rule 9017 of Federal Rules of Bankruptcy Procedure, Creditor requests that the Court take judicial notice of the  
sworn bankruptcy schedules and other relevant documents filed in the instant case.

1 In the present case, the major deficiency with Debtor's Plan is doesn't propose to cure any  
2 arrears. Creditor anticipates<sup>3</sup> that its claim will reflect pre-petition arrears in the amount of  
3 \$1,013,211.49. Accordingly, Debtor's Plan fails to meet the requirements of section 1325(a)(1)  
4 because it does not provide to promptly cure the **entire** outstanding balance of Creditor's arrearage  
5 claim as required by section 1322(b)(5). Based upon the foregoing, the Court should deny  
6 confirmation of the Debtor's Plan. In the alternative, the Court should confirm the Plan with a  
7 provision stating the Debtor must cure Creditor's entire pre-petition arrears, estimated in the  
8 amount of \$1,013,211.49, in equal monthly payments over a period of time not to exceed (60)  
9 months. We would request that the Debtor modify the plan to provide for a timeframe in which  
10 Debtor expects to sell the Subject Property. Creditor does not oppose the sale of the Subject  
11 Property if Creditor's claim is to be paid in full. However, Debtor should not be able to live in the  
12 property without paying their mortgage.

13 **WHEREFORE**, Creditor respectfully requests:

- 14 1. That the Court deny confirmation of the Debtor's Plan;
- 15 2. For such other and further relief as this court deems just and proper

16  
17 Respectfully submitted,

18 **ROBERTSON, ANSCHUTZ & SCHNEID, P.L.**

19  
20 Dated: 12/19/2018

/s/ Sean Ferry (SBN 310347)

SEAN FERRY

Attorneys for HSBC Bank USA, National  
Association, as Indenture Trustee for People's  
Choice Home Loan Securities Trust Series 2005-3

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28 <sup>3</sup> The deadline for filing a proof of claim is January 23, 2019.

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11 Michael Haroutun Miroyan,  
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**CERTIFICATE OF SERVICE**

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Hammond

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JUDGE: M. Elaine Hammond

19  
20 I, Sean C. Ferry, hereby declare as follows:

21 I am an active member of the State Bar of California and I am not a party to the above-  
22 captioned case; my business address is 7676 Hazard Center Drive, Suite 500, San Diego, CA 92108.

23 On December 19, 2018, I caused copies of the following document(s) to be served:

24 **1. Objection to Confirmation of Plan**

25 in the following manner on the parties listed below:

- 26 • **BY FIRST CLASS MAIL:** Pursuant to Federal Rule of Bankruptcy Procedure 7004(b), I  
27 enclosed said document(s) in a sealed envelope addressed to the persons at the  
28 address(es) listed below, placed first class postage fully prepaid thereon, and deposited  
said envelope in a United States mailbox.

**DEBTOR**

Michael Haroutun Miroyan  
PO Box 3181  
Saratoga, CA 95070-1181

**DEBTOR'S COUNSEL**

Eddy Hsu  
Law Office of Eddy Hsu  
1900 S Norfolk St. #350  
San Mateo, CA 94403

• **BY ELECTROIC SERVICE (ECF):**

**TRUSTEE**

Devin Derham-Burk

**US TRUSTEE**

Office of the U.S. Trustee/SJ

I declare under penalty of perjury under the laws of the United States of America that the forgoing is true and correct.

Executed on this 19th day of December, 2018 at San Diego, California.

/s/ Sean C. Ferry  
Sean C. Ferry